

The Commonwealth of Massachusetts



L. JOYCE HAMBERS
COMMISSIONER

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

August 3, 1982

You inquire whether the Massachusetts sales tax applies to sales of food substitutes known as _____ and _____ and the vitamin tablets which are used in conjunction with them.

The _____ ("Institute") provides a program of weight reduction for obese patients. The program includes a fasting phase, lasting up to one year, in which patients eat no foods other than the food substitutes and the vitamins. During the subsequent maintenance phase the food substitutes are eaten in place of some meals.

During the fasting phase the food substitutes are consumed five times a day and the vitamins once a day. A four week supply of the food substitute costs _____. A bottle of 100 vitamin tablets, which is a 14 week supply, is dispensed to patients when they initially purchase the food substitutes, and thereafter as needed, at no additional cost. You state that the bottle of vitamins has a retail value of _____. During the fasting phase patients also pay a monthly service fee of _____ which covers the cost of weekly visits with a physician, blood tests and behavior modification sessions.

One of the food substitutes, _____, contains egg white, sugar, cocoa and various minerals and provides 300 calories per serving. The other food substitute, _____, also contains whey protein and provides 500 calories per serving. Both preparations are in powdered form and are mixed with water or

August 3, 1982

other non-caloric beverages. The vitamin tablets contain iron and iodine in addition to vitamins.

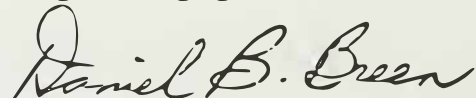
General Laws Chapter 64H, Section 6(h) exempts from taxation sales of food products for human consumption. Specifically excluded from the definition of food products are "medicines, tonics and preparations in liquid, powdered, granular, tablet, capsule, lozenge and pill form sold as dietary supplements or adjuncts."

Based on the foregoing it is ruled that:

1. Sales of the food substitutes, and , are exempt from the sales tax.

2. The Institute is subject to the sales tax on its purchases of the vitamins which it dispenses to patients enrolled in its weight reduction program.

Very truly yours,

A handwritten signature in cursive script, reading "Daniel B. Breen".

Acting Commissioner of Revenue

DBB:RSF:mf

LR 82-78